Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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NO. 85-2018

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1985

ARTHUR KUNGLE JR,

Petitioner

v.

ST. JOHN'S COLLEGE, et al.,

Respondents

ON PETITION FOR WRIT
OF CERTIORARI
TO THE COURT OF APPEALS OF
MARYLAND

PETITIONER'S SUPPLEMENTAL BRIEF

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Note: Texts are newly available in hardbound volumes. It is hard to keep track of the paperbounds.

Stern, Gressman & Shapiro, Supreme Court Practice (1986) 394 encourages this brief about possibly relevant new factors:

1. Parties. Some respondents have changed positions in the corporation, such as Bryce Jacobsen (inadvertently misnamed before--a danger of proofing one's own writing). He has retired as tutor but remains an alumnus, the situation with regard to the others is peculiarly within their knowledge, and not with certainty by petitioner.

2. Opinions below have been reported. Thus: Pet. #574, Sept. Term 1985, cert. denied, 305 Md. 599 (1986), this petition: 85-2018. (Related is Pet. #648, Sept. Term 1985, cert. denied, 306 Md. 70 (1986), related petition: 86-52, in order to keep record whole.)

3. Maryland Rules involved changed, this July. Md. Rule 2-322 (b) & (c) mostly switched parts about early dismissals. But material differences, reliance on hearsay, and not favoring the movant, among others, remain issues. It is

better to encourage good faith efforts (Transcript 55), Schaedler v. Reading Eagle Pub., 370 F. 2nd 795, 799 (1967) than to dismiss, as in this controversy.

4. Maryland Court Rules follow federal rules and precedents, G & H Clearing and Landscaping v. Whitlock, 66 Md.App.348,353-5,503 A.2nd 1379, 1382 (1986). And that relies on Sisk v. Texas Parks and Wildlife, 644 F. 2nd 1056 (1981), which relies on the authorities and Conley v. Gibson, 355 U.S. 41 (1957)--which this petitioner below (App. Br. 12-13) tried to contrast to Holsey v. Collins 90 F.R.D. 122 (1981). G & H, supra, 354, agreeing with plaintiff below Record 160, states that motions for more definite statements are the proper response to vaguness, or unintelligibility (Resp. Br. in Op 1), Scarbrough v. R-Way Furniture Co. 105 F.R.D. 90, 91 (1985), and it helps to narrow issues (Compare Judge Wolf: Transcript 21). But

that motion was avoided by defendants/ Respondants to avoid pointing out:

> the defects complained of and the details desired. F.R.C.P. 12(e)= Md.Rule 2-322(d)

Motions to strike or dismiss are sometimes confused with this (Appendix K-1), 2A Moore's Federal Practice 12-161, nor is it: for want of detail, or a substitute for discovery, or when matters are more or peculiarly within moving party's knowledge; and it should be definite. 2A Moore's 12-130,-141,-152,-160.

5. G & H, supra, 356, also marks a movement from over-precise rhetoric to fairer flexibility in form, seeming to learn from the federal forum. And in this case there were good faith efforts and no serious ommissions above or below, unlike Jacobs v. Adams 66 Md. App 779 (1986), and like Joplin v. Southwestern Bell Tel., 671 F2nd 1274 (1982), Gillibeau v. City

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of Richmond, 417 F. 2nd 426 (1969).

6. It seems strange that the opposition (and the courts) have claimed both superior understanding and lack of it in these proceedings, Innovative Digital Equiipment v. Quantum Technology, 597 f. Supp. 983, 988 (1984). Truly,

> ...practice and procedure often affect substantive rights and the 'liberties of the subject' in a most fundamental way.
> G. Liebman, Maryland Practice, XIV (1984)

Respectfully submitted,

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Certificate of Service

This is to certify that on Sept. 11, 1986. 3 copies of this were sent via 1st class mail to Benjamin Wolman, 14624 Main St, Upper Marlboro, Md 20772, counsel for Respondents.

Arthur Kungle Jr

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APPENDIX:

COURT RULES (306 Md. XLVI-XLVII, 1986)

TITLE 2 -- CHAPTER 300. PLEADINGS AND MOTIONS

AMEND Rule 2-322 to clarify that the court is not limited to granting or denying dismissal when ruling on a motion to dismiss and to specify when a plaintiff may file an amended complaint after the original complaint is dismissed, as follows:

RULE 2-322. PRELIMINARY MOTIONS

. . . . .

(b) Permissive. The following defenses may be made by motion to dismiss filed before the answer, if an answer is required: (1) lack of jurisdiction over the subject matter, (2) faiure to state a claim upon which relief can be granted. (3) failure to join a party under Rule 2-211, and (4) governmental immunity. If not so made, these defenses and objections may be made in the answer, or in any other appropriate manner after answer is filed. / If, on a motion to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 2-501, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 2-501./

(c)/ Preliminary Determination/ Disposition. A motion under sections (a) and (b) of this Rule shall be determined

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before trial, except that a court may defer the determination of the defense of failure to state a claim upon which relief can be granted until the trial. In disposing of the motion, the court may dismiss the action or grant such lesser or different relief as may be appropriate. If the court orders dismissal, an amended complaint may be filed within 30 days after entry of the order or within such other time as the coourt may fix. If leave to amend is granted and the plaintiff fails to file an amended complaint within the time prescribed, the copurt, on motion,may enter an order dismissing the action. If, on a motion to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 2-501, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 2-501.

(Effective July 1, 1986)